REMARKS

By this amendment, Claims 2, 3, 5, 6, 8-25, and 27 are amended. No claims are added or canceled. Hence, Claims 1-28 and 31-35 are pending in the application.

SUMMARY OF THE OFFICE ACTION

Claims 1-4, 7-11, 28 and 31-35 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Goldberg et al. ("*Goldberg*"; U.S. Patent No. 6,389,038) in view of O'Dowd ("*O'Dowd*"; U.S. Patent No. 5,235,595); Claims 5, 12, 14, 16 and 18 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goldberg* in view of *O'Dowd*, further in view of Vargo et al. ("*Vargo*"; U.S. Patent No. 6,477,164); and Claims 6, 13, 17, 19, 20 and 22-27 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goldberg* in view of *O'Dowd*, further in view of Koodli ("*Koodli*"; U.S. Patent No. 6,608,841).

Claims 15 and 21 are allowed.

REJECTIONS BASED ON PRIOR ART

Rejections under 35 U.S.C. § 103(a)

(I) Claims 1-4, 7-11, 28 and 31-35 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goldberg* in view of *O'Dowd*. This rejection is traversed.

There are several fundamental differences between uses of the "timer" recited in Claim 1 and the "hold FIFO 104" described in *O'Dowd*. The timer of Claim 1 is activated to start a delay time, i.e., the <u>maximum allowed delay</u>. The maximum allowed delay time value is a configurable parameter to allow for more media packets of the same trunk to arrive at an aggregator while at the same time limiting the introduced delay (specification page 9, lines 18-20). Significantly, this timer is used to <u>limit the delay</u> so that the delay introduced in waiting for more media packets to arrive is limited to the maximum allowed delay. That the timer is

used for limiting the delay is implicit in that the timer is used in conjunction with a <u>maximum</u> <u>allowed</u> delay.

In contrast, the hold FIFO of *O'Dowd* is used to <u>induce delay</u> into the system, rather than to limit delay. The hold FIFO buffers incoming packets while an outgoing packet is placed on the loop (col. 3, lines 56-61; col. 6, lines 56-61). Hence, it is clear that the hold FIFO is used to introduce delay into the system for various reasons, none of which are to allow for more media packets to arrive so that more packets can be aggregated into an aggregated media payload.

Furthermore, the timer recited in Claim 1 can be <u>activated with a configurable value</u> which, when exceeded, triggers forwarding of an aggregated media packet. Thus, the embodiment recited in Claim 1 is flexible, whereas the hold FIFO is <u>limited to clock cycle</u> <u>increments</u>.

Still further, in *O'Dowd*, the main purpose of the hold FIFO is to introduce delay in order to avoid having to handle each packet separately in order to <u>reduce link layer collisions</u>. The delay and routing features of *O'Dowd* are implemented using hardware so the <u>packets</u> <u>would not have to be handled by a regular host CPU</u>. This <u>teaches away</u> from the embodiment recited in Claim 1, which has no limitation or goal of avoiding CPU usage. *O'Dowd* also seems to assume that the <u>data segments are of fixed length</u> (col. 4, line 60).

By contrast, in the embodiment recited in Claim 1, a specific application of a timer is recited. That application includes taking RTP segments (<u>not necessarily of the same fixed</u> <u>length</u>) of the same affinity (<u>not at all a layer 2 affinity</u> which is implied in *O'Dowd*), waiting some time so there are enough of those segments that can be multiplexed together, and then performing a specific multiplexing procedure.

Next, *Goldberg* does not disclose <u>forwarding packets in response to the aggregated</u> <u>media packet containing a specified number of Real-time Protocol segments, wherein the</u> <u>specified number is variable according to user input</u>. In support of the rejection of original Claims 29 and 30, which included the features regarding the number of RTP segments and regarding the number being user-selected, respectively, the Office Action relied on col. 4, lines 44-47 of *Goldberg*. Specifically, the Office Action alleged that *Goldberg* discloses that "the maximum number of channels per SuperPacket is set to 15." *Goldberg* does not disclose that the number of RTP segments that can trigger the forwarding of an aggregated packet is <u>variable</u> and <u>user-defined</u>. *Goldberg* merely states that the number of channels is set to 15 but does not disclose that this number is variable, or that the number is user-defined.

Furthermore, a <u>number of channels</u> is not the same as or analogous to a <u>number of RTP</u> <u>segments</u>. *Goldberg* describes each of 24 channels utilizing independent <u>packets</u> of voice for each channel (col. 3, lines 7-9). Thus, <u>each channel contains multiple packets</u>. In contrast, FIG. 5 and the related description of the present application describe that an aggregated media packet contains, among other parts, multiple <u>RTP segments that are each derived from a single RTP</u> <u>packet</u>. Consequently, 15 channels per SuperPacket of *Goldberg*, with each containing multiple packets, does not equate to 15 RTP segments of the application, with each containing information from a single RTP packet. Therefore, forwarding an aggregated media packet in response to reaching a user-defined number of RTP segments in the aggregated media packet is not taught by *Goldberg* setting the maximum number of channels, not packets, per aggregated packet (i.e., a SuperPacket) to 15.

Still further, *Goldberg* does not disclose <u>forwarding</u> an aggregated packet <u>in response to</u> <u>the aggregated packet reaching a specified size</u>. *Goldberg* merely discloses setting the number of channels to a specific number, with no effect other than allowing 30 channels to be handled

for E1 deployment (col. 4, lines 47-50). *Goldberg* does not disclose that *when* a SuperPacket is forwarded has anything to do with the number of packets contained in the SuperPacket.

The foregoing discussion shows that, based on the totality of distinctions between the references and what is claimed, that one skilled in the art would not have been motivated to combine teachings of *Goldberg* and *O'Dowd* to arrive at what is claimed. Furthermore, no combination of *Goldberg* and *O'Dowd* would result in what is recited in Claim 1 because all the features recited in Claim 1 are neither taught nor known by those skilled in the art at the time the invention was made. Therefore, these references do not support a valid *prima facie* case of obviousness.

To generally summarize the combination of features that resulted in the embodiment recited in Claim 1, which are not disclosed in the cited art of record and, thus, not motivating factors for combining the references:

(1) Affinity of the packets aggregated is policy driven and not layer 2-based, e.g., all packets which will be routed toward a specific subnet, or some other group of addresses, will get multiplexed together and sent to the same destination node, which will then multiplex them. They are sent in a new packet with its own IP address so there is no limitation in terms of having to be in the same local network, etc.

2) RTP segments which have a very specific structure are multiplexed, which allows for removing some of the headers when multiplexing them together. The stripped headers are conveyed to the other side (the demultiplexer) so the original packets can be rebuilt.

3) The RTP segments do not have to be of the same length, use the same codec, etc.

The criteria that must be met to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a) also require some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *MPEP § 2143* Basic Requirements of a Prima Facie Case of Obviousness.

Moreover, the Court of Appeals for the Federal Circuit has stated that the best defense against hindsight-based obviousness is the requirement for a showing of a teaching or motivation to combine prior art references. In particular, the Federal Circuit has made clear that "a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential evidentiary component of an obviousness holding.'" *Brown & Williamson Tobacco Corp.* v. *Philip Morris Inc.*, 229 F.3d 1120, 1125, 56 USPQ2d 1456 (Fed. Cir. 2000) (quoting *C.R. Bard, Inc.* v. *M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225 [Fed. Cir. 1998]). Specifically, the showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are insufficient. *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614 (Fed. Cir. 1999).

Further, the required teaching or suggestion to make the claimed combination must not be based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Thus, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the cited reference also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

One skilled in the art at the time of the invention would not have been motivated to combine the teachings of *Goldberg* and *O'Dowd* to achieve what is recited in Claim 1, due to the distinctions discussed above. Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and

the prior art references as a whole. Thus, "the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *MPEP §2141.02* citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

The Office Action does not address Claim 1 as a whole. Rather, the Office Action appears to use impermissible hindsight to pick and choose certain features from different references in an attempt to stitch together an obviousness rejection. It is well-settled that "[i]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious" and that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir 1992); quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988).

The Federal Circuit has reiterated that "the tests of whether to combine references need to be applied rigorously." *McGinley v. Franklin Sports Inc.*, 262 F.3d 1339, 60 USPQ 2d 1001, 1008 (Fed. Cir. 2001). Broad, conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence" (*McElmurray v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ 2d 1129, 1131 (Fed. Cir. 1993)), and a general relationship between fields of the prior art references is insufficient to suggest the motivation to combine such references (*In re Dembiczak*, 175 F.3d 994, 50 USPQ 2d 1614, 1617 (Fed. Cir. 1999)).

Guided by the foregoing principles, the Office Action statement that one of ordinary skill in the art would have been motivated to implement the delay FIFO of O'Dowd in the system of Goldberg in order to <u>provide a contention free media while an outgoing packet is</u>

18

transmitted is an unrelated conclusory statement and insufficient to suggest motivation to combine. The stated goal of contention free media has nothing to do with the media packet aggregation technique recited in Claim 1. By contrast, this alleged motivation teaches away from Claim 1 because, in Claim 1, delay is not intentionally introduced into the system to allay contention, as in *O'Dowd*. There is simply no comparable contention to deal with in Claim 1.

Claims 4, 7, 26 and 32 depend directly or indirectly from Claim 1 and, therefore, are allowable over *Goldberg* in view of *O'Dowd* for at least the same reasons as Claim 1. Claims 31 and 33-35 recite a similar feature as Claim 1 regarding aggregating and forwarding the aggregated media packet when a non-zero maximum allowed delay time is reached. It is shown above that this feature is not disclosed in *Goldberg* and *O'Dowd*. Withdrawal of the rejection of Claims 1, 4, 7, 26 and 31-35 under 35 U.S.C. § 103(a) is requested.

(II) Claims 5, 12, 14, 16 and 18 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goldberg* in view of *O'Dowd*, further in view of *Vargo*. This rejection is traversed.

(III) Claims 6, 13, 17, 19, 20 and 22-27 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goldberg* in view of *O'Dowd*, further in view of *Koodli*. This rejection is traversed.

Claims 2, 3, 5, 8-14 and 16-18 are amended to depend from allowed Claim 15. Claims 6, 19, 20, 22-25 and 27 are amended to depend from allowed Claim 21. No new matter is introduced in the application by way of these amendments, nor should a new search be required because these claims have been previously presented and examined.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that all of the pending claims

(1-28 and 31-35) are now in condition for allowance. Therefore, the issuance of a formal

Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is

believed that such contact would further the examination of the present application.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,

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on February 28, 2005 by _____
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20